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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,282	01/16/2004	Jeremy S. Cooper	2018.0050001/JSW	5141

26111 7590 12/28/2006
STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

CHANG, JULIAN

ART UNIT	PAPER NUMBER
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2152

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/28/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/758,282	Applicant(s) COOPER ET AL.	
	Examiner Julian Chang	Art Unit 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15,16,19,21,24,25 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15,16,19,21 and 24 is/are allowed.
- 6) ☒ Claim(s) 25 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office action is responsive to communication filed on 10/04/2006. Claims 15, 16, 19, 21, 24, 25 and 28 are pending, and have been allowed.

Terminal Disclaimer

2. The terminal disclaimer filed on 10/04/2006 disclaiming the terminal portion of any patent granted on this application that would extend beyond the expiration date of U.S. Patent No. 6,681,255 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 25 and 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In view of applicant's Specification, it is clear that applicant intends a computer program product to include a carrier wave carrying software, and a computer usable medium to include media that transmits a carrier wave or other signal. As such, the claims recite a signal encoded with functional descriptive material, which fails to fall within any of the categories of patentable subject matter set forth in section 101.

Response to Arguments

4. Applicant's arguments, see pp. 8-13, filed 10/04/2006, with respect to claims 15-28 have been fully considered and are persuasive. The rejection of 04/06/2006 has been withdrawn.

Allowable Subject Matter

5. Claims 15, 16, 19, 21 and 24 are allowed.

6. The following is an examiner's statement of reasons for allowance:

Applicant's equation for calculating wait time compares the aggregated bytes received against the expected number of bytes at the target bandwidth. When the actual number of bytes exceeds the target number of bytes, the system waits until the bytes counts are the same, thereby achieving the target bandwidth.

Mogul teaches delaying the sending of an acknowledgement message in order cause data transmission to occur approximately at a target bandwidth. This is achieved through a delay factor D, which is adjusted to keep transmission at the target bandwidth. Since the system of Mogul achieves a target bandwidth by delaying the acknowledgement, and not the request, as in the present invention, the delay factor D is not allowed to fluctuate excessively. Allowing the delay factor D to fluctuate too much will cause acknowledgement timeouts in the system. For this reason, the system of Mogul can only achieve the target bandwidth approximately.

Both systems allow for transmission to remain at or below a target bandwidth. The formula for wait time of the present invention provides for a more accurate means of achieving this.

The prior art of record fails to reasonably teach singly or in combination the formula for a wait time, as claimed in the present invention, to limit the transmission rate of a system to a target bandwidth. The Office is unable to find an analogous reference that teaches such a formula.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

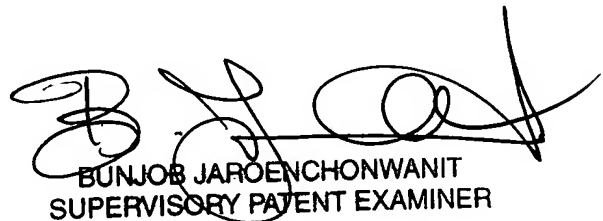
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Chang whose telephone number is (571) 272-8631. The examiner can normally be reached on Monday thru Friday 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2152

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC



BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER